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The Honorable Mike Crapo
Chairman
Committee on Banking, Housing
and Urban Affairs
United States Senate
Washington, DC 20515

The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing,
and Urban Affairs
United States Senate
Washington, DC 20515

Dear Chairman Crapo and Ranking Member Brown:

On behalf of America's credit unions, I am writing regarding Consumer Financial Protection Bureau (CFPB) Director Kathy Kraninger's testimony during the hearing on "The Consumer Financial Protection Bureau's Semi-Annual Report to Congress." The Credit Union National Association (CUNA) represents America's Credit Unions and their 115 million members.

General Comments

Credit unions are the original consumer financial protectors. Because of their not-for-profit, member-owned cooperative structure, credit unions are not subject to the same revenue-driven motives that are characteristic of for-profit financial services providers. Instead, credit unions' member-centric focus means they approach their members differently than other market participants approach their customers.

In fact, rather than outright rejecting the creation of the CFPB, credit unions acknowledged that consumers needed protection from the Wall Street banks and other bad actors when Congress was actively developing legislation that would ultimately become the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act (Dodd-Frank Act). Unfortunately, the CFPB, in its first several years of existence, repeatedly missed opportunities to leverage credit unions' mission and history to the benefit of consumers, and instead finalized regulations that harmed credit unions and their members. The impact of these regulations, such as the remittance rule and others, has driven many credit unions to leave markets or reduce their product offerings. In addition, one-size-fits-all regulation directly hits credit union member-owners in the pocket book, costing them \$6.1 billion in 2016 alone based on a CUNA survey conducted in 2017." ¹.

Consumers lose when one-size-fits-all rules force credit unions to pull back safe and affordable options from the market, pushing consumers into the arms of entities engaged in the very activity the rules were designed to curtail. Credit unions and their members should not pay for the sins of bad actors.

¹ See Credit Union National Association, [2017 Regulatory Burden Financial Impact Study: An Elevated New Normal](https://www.cuna.org/uploadedFiles/Global/About_Credit_Unions/FINAL_4-Page_Executive_Summary_Web.pdf) available at https://www.cuna.org/uploadedFiles/Global/About_Credit_Unions/FINAL_4-Page_Executive_Summary_Web.pdf.

Under Director Kraninger's leadership, the CFPB has an opportunity once again to examine and, where necessary, modify its approach to regulation in a manner that ensures the Bureau is fulfilling its consumer protection mission without impeding the availability of safe and affordable financial products and services.

CUNA Supports a CFPB Commission, Rather than a Single Director Structure

While there are many measures the Bureau must take to improve the regulatory landscape, Congress also has a responsibility to ensure the CFPB is an effective agent of consumer protection. The current structure—with a single, powerful director—gives too much authority to one person and does not provide enough oversight and accountability. Congress should enact legislation that changes the leadership structure to a multimember, bipartisan commission.

Over the years, significant questions and concerns regarding the Bureau's expansive power and the actions taken by both Directors have been raised by Members of Congress and other stakeholders. A multi-member commission, as envisioned by the original proponents of the Bureau, would enhance consumer protection by ensuring diverse perspectives are considered prior to finalizing rules, and would prevent disruptions caused by leadership changes. Credit union members and other consumers benefit from policymaking that includes more voices. This structure is consistent with the traditions of our democracy and would provide certainty that is essential for consumers and the financial services industry, regardless of which political party controls the White House.

Perhaps the best evidence of the virtues of a CFPB commission is the fact that leaders of both parties have supported a multi-member commission only to back off that support when it was politically convenient to do so. This political approach is a disservice to the consumers the Bureau is entrusted to protect.

Credit Union Recommendations for the CFPB's Rulemaking Agenda

America's credit unions value the CFPB's mission, "to make consumer financial markets work for consumers, responsible providers, and the economy as a whole." Unfortunately, credit unions' ability to provide their members with high-quality and consumer-friendly financial products and services has been impeded by several rules promulgated under past leadership. As mentioned above, the CFPB's overly broad approach to rulemaking resulted in burdensome regulatory requirements being imposed on credit unions based on the irresponsible practices of other industry stakeholders.

Outlined below are high-level priorities and recommendations credit unions have provided to the CFPB regarding its rulemaking approach and several specific rules:

Regulating America's Credit Unions

CUNA has strongly urged the Bureau to closely monitor the impact its rules have had on credit unions and their members and to appropriately tailor regulations to reduce burden or exempt credit unions entirely, as appropriate. The Bureau's rulemakings and supervisory efforts should be focused on Wall Street banks and the unregulated and under-regulated sectors of the financial services industry. If the Bureau spent fewer resources on regulating and supervising credit unions, then it could spend more time focusing on entities actively engaged in predatory practices that exploit consumers.

Credit unions, as a byproduct of their structure, history, and mission, are unlike any actor in the financial services space, and are best positioned to succeed when supervised and examined by a regulator especially familiar with their unique characteristics. For that reason, the Bureau should work more closely with the National Credit Union Administration (NCUA) in the rulemaking process and use its statutory authority to transfer consumer protection regulation supervision of the largest credit unions to NCUA.

Statutory Exemption Authority

In the wake of the financial crisis, Congress contemplated the need for exemptions to certain rules and crafted the Dodd-Frank Act to authorize the Bureau to tailor its rules so those acting responsibly in the financial services marketplace are not inadvertently impacted. Congress provided this authority expressly in Section 1022 of the Dodd-Frank Act.

*The Bureau, by rule, may conditionally or unconditionally exempt **any class of covered persons**, service providers or consumer financial products or services from any provision of this title, or from any rule issued under this title . . . (Emphasis added)²*

The statutory language is unambiguous and grants the CFPB the authority to exempt any class of covered entities from its rules.

CUNA has urged the Bureau to use this authority to protect credit union members from the problems associated with creating one-size-fits-all rules that are inappropriate for the different not-for-profit structure of credit unions. Credit unions and credit union service organizations (CUSOs) should receive appropriate exemptions from the Bureau's regulatory requirements. Furthermore, it is critically important for the Bureau to understand that credit unions are not asking to be exempt from all its rules; instead, the Bureau should consider how credit unions are vastly different from other financial service providers and tailor regulatory requirements accordingly.

Debt Collection

As not-for-profit financial cooperatives, credit unions treat their members-owners with respect throughout the debt collection process and they comply with relevant consumer protection regulations for first-party debt collectors. As a result, consumer complaints regarding credit unions and their debt collection practices are very low compared to other lenders.

For a variety of reasons, credit unions and other lenders may engage third party companies to assist in debt collection efforts. As the Bureau develops a rulemaking related to debt collection, CUNA has respectfully requested the focus remain strictly on the practices of third-party debt collectors. The Bureau's rulemaking in this area should be reasonable and tailored to mitigate any potential indirect impacts on credit unions and other lenders.

Short-term Small Dollar Lending

Credit unions often provide the safest and most affordable loan options for consumers in need of emergency credit. The Bureau's rules governing short-term, small dollar lending should be meaningfully tailored to address predatory practices in the small dollar, short-term lending space. However, any rule addressing predatory lending practices should not inhibit credit unions from offering reasonable small dollar loan products to members in need. CUNA has asked the Bureau to revise its current small dollar lending rule to allow more credit unions to enter the short-term, small dollar lending space. We have asked for revisions to include an express, broader exemption for credit union loan products. In addition, we urge the Bureau to collaborate with the NCUA as it develops additional small dollar loan programs to coincide with the Payday Alternative Loan (PAL) program, which currently benefits from a partial carve-out from the Bureau's rule.

Remittances

While CUNA is supportive of appropriate safeguards for consumers initiating remittance transfers, including clear and understandable disclosures, we have also recommended the CFPB propose and finalize substantive amendments to the Remittance Rule to balance necessary consumer protections with a more tailored regulation that

² 12 U.S.C. § 5512(b)(3)(a).

allows consumers access to desired products and services. In this instance, CUNA has recommended the Bureau make at least two key revisions to the current rule:

1. Raise the safe harbor threshold from 100 to 1,000 remittance transfers in both the prior and the current calendar years;
2. Eliminate or allow a consumer to opt out of the 30-minute cancellation requirement.

In addition, Congress can act to provide certainty to credit unions offering remittance services by making permanent the Dodd-Frank Act's temporary fee estimates safe harbor, which is set to expire in July 2020. The safe harbor allows credit unions to provide members with estimated fees and exchange rates instead of exact amounts under specific conditions. If the safe harbor expires, then the cost of compliance for offering remittance services will substantially increase and consumers will ultimately have fewer options in the market.

Historically, remittances are a significant and, depending on a credit union's field-of-membership, popular service offered to members. The current remittance rule has made it more difficult for the consumers to obtain this service from their local credit union.

Home Mortgage Disclosure Act (HMDA)

The Bureau has acknowledged that credit unions maintained sound credit practices through the economic crisis and did not engage in the practices that led to the crash of the housing market. Nevertheless, the HMDA rule has disproportionately burdened credit unions, due to their finite resources, despite no evidence of past wrongful conduct. This makes little sense especially given that credit unions lend within their fields of membership which may skew their HMDA data.

Although recent developments provided some HMDA relief to small institutions, including the increase to the reporting thresholds and the S. 2155 partial exemption, CUNA has urged the CFPB to consider additional amendments to the 2015 HMDA final rule that would provide meaningful exemptions to credit unions, including:

- Allow reporting for Home Equity Lines of Credit (HELOCs) to once again be voluntary. HELOC reporting had always been voluntary under prior rules as these loans are distinct from first lien mortgages.
- Reduce the data set for all credit unions to data points specifically enumerated in the Dodd-Frank Act. The statutorily enumerated data points are sufficient for the purpose of identifying discriminatory practices and implementing the purpose of HMDA.
- Increase the mortgage thresholds to exempt as many credit unions as possible from HMDA reporting, particularly considering the fact credit unions may only lend within their fields of membership.

Unfair, Deceptive, or Abusive Acts or Practices (UDAAP)

In the past, the Bureau engaged in the practice of "regulation by enforcement," especially regarding its UDAAP authority. Instead of proposing clear regulations pursuant to an appropriate Administrative Procedure Act (APA) process, the Bureau would use its enforcement authority against financial institutions and expect the subsequent consent order to serve as a means for others to determine what acts and practices it interprets to be in violation of the law. Under the leadership of Acting Director Mulvaney, this controversial practice ended as the Bureau announced an intent to consider a potential UDAAP rulemaking soon. CUNA supports this rulemaking effort and has urged the CFPB to clarify its overly-subjective approach to UDAAP through a rule or other method.

CUNA has recommended the Bureau consider the following actions:

1. Solicit feedback on whether to eliminate or clarify the overly-subjective “abusive” prong of UDAAP. It should also seek feedback on whether other aspects of its UDAAP authority should be changed.
2. Clarify that previous enforcement actions or consent orders that conflict with statutory or judicial precedent create no new expectations for compliance. This would provide more transparency and due process to credit unions and consumers.
3. Clarify and reaffirm the Bureau’s narrow authority under the Dodd-Frank Act in regulating the business of insurance—particularly as it applies to credit unions and banks selling insurance—and that UDAAP is not a backdoor to regulate insurance activities.

Ability-to-Repay/Qualified Mortgage

The Bureau completed and issued an assessment report on the impact of the 2013 Ability-to-Repay and Qualified Mortgage Rule (ATR/QM rule). Based on the report’s data, CUNA is supportive of the CFPB engaging in an initiative to determine how and to what extent the rule could be modified to improve upon the initial rule’s effects. Credit unions look forward to providing substantive feedback on necessary modifications to the ATR/QM rule in the wake of the report, including on the appropriateness of the 43% debt to income ratio, defining “residual income,” the future of the QM GSE “patch,” and possible amendments to Appendix Q.

As the Bureau considers potential revisions to the rule, CUNA has urged the Bureau to engage in a meaningful and prolonged feedback process to ensure amendments do not create new overly burdensome requirements on credit unions.

Small Business Data Collection

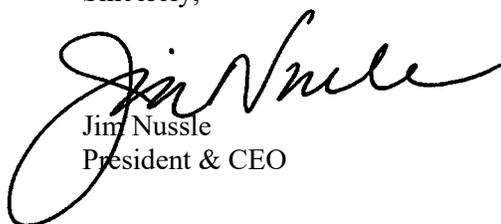
The Dodd-Frank Act amended the Equal Credit Opportunity Act (ECOA) to require financial institutions to compile, maintain, and submit to the Bureau certain data on credit applications by women-owned, minority-owned, and small businesses.

Credit unions’ unique and distinct memberships, a consequence of legally-restricted fields of membership, would not correspond with the Bureau’s plans for data collection and would likely result in data that does not portray a complete or accurate picture of credit union lending. CUNA has recommended any rule issued under this authority expressly exclude credit unions from reporting requirements. The regulatory burden likely to be associated with this rule, particularly for smaller credit unions, could harm the ability of small business owners to obtain needed credit from their credit union.

Conclusion

We look forward to continuing to collaborate with Congress and the CFPB to improve upon the past work of the Bureau, while strongly supporting a continued focus on reigning in bad actors in the financial services marketplace. On behalf of America’s credit unions and their 115 million members, thank you for holding this important hearing.

Sincerely,



Jim Nussle
President & CEO